

**MEMO ENDORSED**

HON. VALERIE FIGUEREDO

UNITED STATES MAGISTRATE JUDGE

DATED: 12-18-2024

December 16, 2024

**VIA ECF**

Honorable Valerie Figueredo  
 United States Magistrate Judge  
 Daniel Patrick Moynihan United States Courthouse  
 500 Pearl Street  
 New York, New York 10007

The parties are directed to provide another status update on or before **January 17, 2025**. If B&C wishes to raise a dispute concerning Respondents' document production or privilege log, it can do so at that time.

Re: Application of B&C KB Holding GmbH for an Order to take Discovery Pursuant to 28 U.S.C. § 1782 from Goldberg Lindsay & Co. LLC d/b/a Lindsay Goldberg and Michael Dees, Case No. 1:22-mc-00180-LAK-VF

Dear Judge Figueredo:

Pursuant to the Court's order, dated November 21, 2024 (ECF No. 149), we write on behalf of all parties to provide a joint update as to the status of discovery in the above-referenced matter.

**I. Statement of Applicant B&C KB Holding GmbH ("B&C")**

Document Productions: B&C received rolling document productions from Respondents on or around the dates to which the parties stipulated as the deadlines in the so-ordered stipulation (the "Stipulation"). ECF No. 148. Under the Stipulation, Respondents' deadline for substantial completion of document production was November 15, 2024. By that date, Respondents produced approximately 8,500 documents and indicated that around 4,500 documents have been withheld and/or redacted on privilege grounds.

Respondents have now produced approximately 9,000 documents in total. That number, however, is substantially less than Respondents' projected volume of documents based on their estimated responsiveness rate, which projected approximately 30,000 responsive documents based on a representative sample set.<sup>1</sup> B&C has asked Respondents to explain the reasons for the discrepancy by, for example, providing responsiveness tallies for each search-term query that Respondents used to generate their review population. To date, no such explanation has been provided by Respondents and B&C has reserved all rights.

In the meantime, on December 4, 2024, Respondents' counsel represented that, as of November 15, 2024, Respondents had substantially completed their production. On December 9, 2024, Respondents produced around 300 additional documents as part of a "clean-up" production. On December 13, 2024, based on the representation of counsel for Respondents, B&C initiated a wire transfer for payment of US \$330,000 to Respondents, per the terms of the Stipulation. Because of the discrepancy between Respondents' estimated and actual production volume, and because B&C has not yet taken Mr. Dees' deposition, B&C continues to reserve all rights as to any deficiencies in Respondents' production.

<sup>1</sup> As noted in B&C's August 26 letter, Respondents originally projected a responsiveness rate of 25-27%, which would have yielded around 30,000 responsive documents from a 119,000-document population that Respondents were reviewing for responsiveness. ECF No. 144 at 2.

Privilege Log: Today, Respondents produced a categorical privilege log. B&C reserves all rights regarding the sufficiency of the log and/or the propriety of Respondents' privilege determinations pending B&C's review of the log.

Deposition of Michael Dees: The deposition of Michael Dees will take place on December 19, 2024, starting at 1:00 p.m.

**II. Statement of Respondents Goldberg Lindsay & Co. LLC d/b/a Lindsay Goldberg and Michael Dees**

As noted above, and pursuant to the stipulation filed by the parties and so-ordered by the Court, Respondents completed their substantial production of documents by November 15, 2024, have agreed to make Mr. Dees available for a deposition on December 19, which later date was requested by B&C's counsel, and have met and conferred in good faith and answered all follow up questions and requests from B&C's counsel.

B&C's purported concerns about the scope of Respondents' document production are based solely on unfounded speculation. In accordance with B&C's demand, Respondents employed contract attorneys to conduct a review of nearly 120,000 documents that were identified through application of B&C's hundreds of broad search terms. In accordance with B&C's timetable, that review took place on a compressed timeframe, and in less time than the several months B&C took to respond to Respondents' requests to meet and confer on search parameters. The "estimated responsiveness rate" to which B&C refers was just that—an estimate that was developed by the parties solely for purposes of pegging a cost estimate before the actual review was conducted. Beyond that, B&C has not identified any deficiencies in Respondents' production of thousands of documents to B&C.

Notably, Respondents have informed B&C that, to the extent B&C has any concerns over the sufficiency of Respondents' document production, Respondents are prepared to meet and confer in an effort to resolve those concerns prior to Mr. Dees's deposition. Tellingly, B&C did not take Respondents up on this offer, and instead indicated that they want to proceed with Mr. Dees's deposition on December 19, 2024. That is B&C's choice. As a result of that choice, Respondents consider that this matter will be concluded following the completion of Mr. Dees's deposition on December 19.

Respectfully submitted,

s/ Zachary D. Rosenbaum  
Zachary D. Rosenbaum  
of KOBRE & KIM LLP

*Counsel for Applicant*

s/ Eric F. Leon  
Eric F. Leon  
of LATHAM & WATKINS LLP

*Counsel for Respondents*

cc: All counsel of record (via ECF)